

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL FRANCISCO DAY,)	
)	Case No. 3:07-cv-122
Petitioner,)	
)	JUDGE KIM R. GIBSON
v.)	
)	
SCOTT KLINEFELTER,)	
SUPERINTENDENT S.C.I.)	
HOUTZDALE,)	
)	
Respondent.)	

MEMORANDUM ORDER

This matter is before Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

On January 17, 1996, petitioner Michael Day (“Petitioner”) was sentenced in the Allegheny County Court of Common Pleas to a life term of imprisonment. *See Commw. of Pa. v. Michael Day*, CP-02-CR-0007519-1995; *Commw. of Pa. v. Michael Day*, CP-02-CR-0007522-1995. On May 25, 2007, Petitioner filed a petition in this Court for a writ of habeas corpus. (ECF No. 3). On October 27, 2008, the Court denied this petition and declined to issue a certificate of appealability. (ECF No. 19). Then, on July 3, 2023, Petitioner filed a “Rule 60(b) Motion” seeking to invalidate his underlying state court convictions. (*See* ECF No. 34) (identifying evidence that “would entitle [his] convictions to be vacated”).

On July 7, 2023, Magistrate Judge Pesto entered a Report & Recommendation (“R&R”) recommending that the Court deny without prejudice Petitioner’s motion at ECF No. 34 as a successive habeas corpus petition filed without authorization from the United States Court of

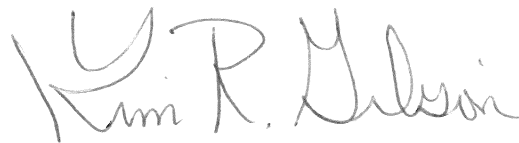
Appeals for the Third Circuit. (ECF No. 36). The Magistrate Judge also recommended that a certificate of appealability not issue because jurists of reason would not debate the correctness of the Court's denial of this unauthorized petition. (*Id.* at 3). Lastly, the Magistrate Judge noted that the parties would have fourteen days to file written objections to the R&R in accordance with 28 U.S.C. §§ 636(b)(1)(B) and (C), and Local Civil Rule 72.D.2. (*Id.*). As an unregistered ECF user, Petitioner had until July 24, 2023, to file objections thereto. (*See generally id.*).

Neither party filed written objections to the R&R, timely or otherwise. Accordingly, upon reasoned consideration of the above filings, *see EEOC v. City of Long Branch*, 866 F.3d 93, 99–100 (3d Cir. 2017), the following order is entered:

AND NOW, this 1st day of September, 2023, IT IS HEREBY ORDERED that Magistrate Judge Pesto's R&R at ECF No. 36 is **ADOPTED** as the Opinion of the Court for its reasoning and conclusion.

IT IS FURTHER ORDERED that Petitioner's filing at ECF No. 34 is **DENIED WITHOUT PREJUDICE**. No certificate of appealability shall issue.

BY THE COURT:



KIM R. GIBSON
UNITED STATES DISTRICT JUDGE

Notice by U.S. mail to:

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